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Wednesday, January 16, 2002
UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re


HERMATIGE HEALTH CARE, No. 00-12535
[Debtor](#)  (s).

_____/


CHARLES SIMS, [Trustee](#) ,

[Plaintiff](#)  (s),

v. A.P. No. 01-1126

LESLIE BRECKENRIDGE, et al.,
[Defendant](#)  (s).

Memorandum re Motion to Dismiss

In *Williams v. California 1st Bank*, 859 F.2d 664 (9th Cir. 1988), the court held that a trustee may not bring an alter ego [claim](#)  against a corporate debtor's principals. Since then, some courts have held or opined that a "generalized" alter ego claim may be asserted notwithstanding *Williams*. See, e.g., dicta in *In re Folks*, 211 B.R. 378, 385 (9th Cir. BAP 1997). Such cases are based on the shaky proposition that California law allows a corporation to pierce its own corporate veil. See *In re Davey Roofing, Inc.*, 167 B.R. 604, 608 (Bkrtcy.C.D.Cal.1994). The sole basis for this interpretation of California law is dicta in *Stodd*

v. Goldenberger, 73 Cal.App.3d 827 (1977). The court has found no California case actually allowing a corporation to pierce its own veil, and suspects that the dicta in Stodd is misleading. In dismissing a trustee's alter ego complaint, the court there noted that that it was defective for failure to allege damage to the corporation. This is not, as the courts in Davey and Folks seemed to think, authority for the proposition that an alter ego claim is proper if damage to the corporation is alleged.

The complaint alleges that the defendants "looted" the debtor corporation for their benefit; if that is the case, they are liable under bankruptcy law for at least the value of the assets removed from the corporation without valid consideration flowing to the corporation. The only difference the alter ego theory makes is that if the trustee has the right to bring such a claim then he may obtain, as an additional item of damages, a judgment against the principals of the corporation for the amount of its debt. This is damage to the creditors, not the corporation.

Notwithstanding Davey and Folks, the court does not believe that a corporation has the right, under California law, to pierce its own corporate veil. Accordingly, the relief sought is barred by Williams. The motion to dismiss will therefore be granted with leave to amend. Defendants' remaining problems with the complaint may be renewed if they are still applicable to the amended complaint.

Dated: January 16, 2002

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#) 

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